STATE OF MICHIGAN
IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

MICHIGAN GUN OWNERS, INC.;
and ULYSSES WONG, an individual,

COA: 329632
WASHTENAW COUNTY
CIRCUIT COURT: 15-247-CZ

Appellants,

v.

ANN ARBOR PUBLIC SCHOOLS, and
JEANICE K. SWIFT, an individual

Appellees,

_____/

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APPLICATION FOR LEAVE TO APPEAL

**** This appeal involves interpretation of a constitutional or statutory provision ****

ORAL ARGUMENT REQUESTED

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JURISDICTIONAL STATEMENT

Appellants, Michigan Gun Owners, Inc., and Ulysses Wong state this Court has jurisdiction to decide this appeal pursuant to MCR 7.303(B)(1) and grounds to decide this appeal pursuant to MCR 7.305(B)(2), MCR 7.305(B)(3), MCR 7.305(B)(5)(a) & MCR 7.305(B)(5)(b).

On September 24, 2015, the Honorable Carol Kuhnke, Washtenaw County Circuit Court Judge, granted summary disposition in favor of Defendant-Appellees, Ann Arbor Public Schools and Jeanice K. Swift, without citing a specific court rule but presumably based upon MCR 2.116(C)(9); denied Appellants' declaratory relief and entered an Order granting summary disposition to Appellees. On December 15, 2016, the Michigan Court of Appeals issued the decision appealed herein, concurring with the lower court decision and released same for publication. Appellants Michigan Gun Owners, Inc. and Ulysses Wong timely filed their Application for Leave to Appeal pursuant to MCR 7.305(C).

STANDARD OF REVIEW

Appellant is seeking review of a motion for summary disposition granted presumably under MCR 2.116(C)(9). See *Slater v Ann Arbor Pub Sch Bd of Ed*, 250 Mich App 419, 425; 648 NW2d 205 (2002). "When deciding a motion under MCR 2.116(C)(9), which tests the sufficiency of a defendant's pleadings, the trial court must accept as true all well-pleaded allegations and properly grants summary disposition where a defendant fails to plead a valid defense to a claim." *Id.* "Summary disposition under MCR 2.116(C)(9) is proper when the defendant's pleadings are so clearly untenable that as a matter of law no factual development could possibly deny the plaintiff's right to recovery." *Id.* at 425-426. At issue in this case is whether a state statutory scheme preempts

a local regulation and thus a question of statutory interpretation exists subject to de novo review. *Ter Beek v City of Wyoming*, 297 Mich App 446, 452; 823 NW2d 864 (2012).

STATEMENT OF QUESTION PRESENTED

WHETHER A SCHOOL DISTRICT IS IMPLIEDLY/FIELD PREEMPTED FROM PROMULGATING FIREARM RULES OR REGULATIONS?

The trial court answers "NO."
The Court of Appeals answers: "NO."
Appellants answer: "YES."
Appellees answer: "NO."

STATEMENT OF FACTS

Plaintiff-Appellant Michigan Gun Owners [hereinafter "MGO"] is a not-for-profit grass roots organization created under the Nonprofit Corporation Activity Day of 1982 committed to educating the public on safe, responsible gun ownership and preserving and defending the right to keep and bear arms as guaranteed by the Bill of Rights and Article I, § 6 of Michigan's Constitution.

Plaintiff-Appellant Ulysses Wong is a local resident with children attending Ann Arbor Public Schools. Wong is licensed to carry a concealed pistol and in fact does so.

Defendant-Appellee Ann Arbor Public Schools is a school district, pursuant to MCL 380.6; a local unit of government, pursuant to MCL 123.1101(a) and MCL 169.209(6) [hereinafter "AAPS"]. Defendant-Appellee Jeanice K. Swift is an employee of AAPS engaged in the enforcement of AAPS's weapons policy.

MCL 750.237a(4) generally prohibits possession of a firearm within a "weapon free school zone". MCL 750.237a(5)(c) exempts "an individual who is licensed by this state or another state to carry a concealed weapon".

MCL 28.425o(1)(a) generally prohibits the carrying of a "concealed weapon" at a school or school property. However, this statute specifically provides an exception for a concealed pistol licensee while in a vehicle on school property, if he or she is dropping the student off at the school or picking up the student from the school.

18 USC §922(q)(2)(A) restricts knowingly possessing a firearm in a school zone. An exception exists for an individual licensed to do so by the State in which the school zone is located. 18 USC §922(q)(2)(B)(ii).

Reading the three statutes in concert, an individual who is licensed by this state to carry a concealed weapon may not carry a concealed weapon onto a school or school property, excepting those who are in a vehicle and picking up or dropping off the student from school. An individual who is in possession of a firearm that is not concealed, (i.e. openly carried), is not prohibited from possessing that firearm at a school or on school property if that individual is licensed by this state to carry a concealed weapon. The sole concealed-carry exception of picking up or dropping off a student does not act as a limitation to those who are openly-carrying elsewhere at a school or on school property.

On April 15, 2015, the Ann Arbor Public School Board enacted Policies 5400, 5410, and 5420 following a disruption caused by school staff at Pioneer High School over the presence of a legally carried weapon at a choir concert on March 5, 2015.

Policy 5400 allows the Superintendent to close schools and cancel events if there is an emergency. It specifically states that the presence of a dangerous weapon, which includes a pistol, is an emergency. Policy 5410 designates all Ann Arbor Public School's property, as "Dangerous Weapon & Disruption-Free Zones." This policy mandates that they refuse entry to anyone causing a disruption of the educational process or a reasonable forecast of material disruption. Policy 5410 further mandates the Superintendent is charged with its enforcement. Policy 5420 states no person in possession of a dangerous weapon (including a pistol) will be allowed to be on Ann Arbor Public Schools property with the only exception being officers duly sworn to and in good standing with public law enforcement agencies as well as any other future exceptions to be defined by the Superintendent (Appendix A).

On April 27, 2015 Plaintiff-Appellees Plaintiffs filed suit seeking a Declaratory Judgment in an effort to establish conclusively that the AAPS policy implementation was unlawful as it affects lawful firearm possession.

On August 31, 2015, Defendant-Appellees responded by filing their Motion for Summary Disposition and Declaratory Judgment. Defendant-Appellees' motion was heard on September 24, 2015 before the trial court. At the motion hearing, the trial court denied Plaintiff-Appellants' motion(s) and granted Defendant-Appellees' request for summary judgment. The trial court issued its written Order Granting Defendants' Motion for Summary Disposition and Dismissing Complaint on September 24, 2015 (Appendix B).[1] The Order incorporated the court's Transcript of Proceedings of August 10, 2015.

On December 13, 2016 Appellants argued this case before a panel of the Michigan Court of Appeals. On December 15, 2016, the Court of Appeals issued the opinion at issue in the instant appeal.

[1] All documents attached hereto were considered by the court below, or are properly part of the record on appeal. See *Coburn v Coburn*, 230 Mich App 118, 583 NW2d 490, *rev'd on other grounds*, 459 Mich 874, 585 NW2d 302 (1998). Copies of constitutional, statutory or court rule provisions are included in the appendix, pursuant to MCR 7.212(C)(7).

ARGUMENT

SCHOOL DISTRICT WEAPONS POLICIES ARE FIELD PREEMPTED WHEN APPLIED TO FIREARMS

In a case that mirrors the instant issue quite cleanly, the Court of Appeals has clearly established that a quasi-municipal corporation, i.e., a governmental agency authorized by constitution or statute to operate for and about the business of the state, such as a school district, is preempted from instituting firearm regulations and intruding on the state statutory scheme. *Capital Area Dist. Library v. Michigan Open Carry, Inc.*, 826 N.W.2d 736, 298 Mich.App. 220 (2012) lv. denied 495 Mich 898, 839 NW2d 198 (2013).

In *Capital Area Dist. Library*, (hereafter alternatively referred to as "CADL") the court addressed "*whether district libraries established under the District Library Establishment Act (DLEA), MCL 397.171 et seq., are subject to the same restrictions regarding firearm regulation that apply to public libraries established by local units of government. Plaintiff, the Capital Area District Library (CADL), brought this action for declaratory and injunctive relief, seeking to validate and enforce its ban on firearms on its premises. Defendant, Michigan Open Carry, Inc. (MOC), argues that CADL does not have the power to regulate firearms. Our job is not to determine who has the better moral argument regarding when and where it is appropriate to carry guns. Instead, we are obligated to interpret and apply the law, regardless of whether we personally like the outcome.*" Id. at 223.

Many of the same arguments present in AAPS's motion were addressed by the CADL court. Including the following identical points:

First, CADL argued it properly instituted its firearm policy pursuant to its power derived from the DLEA (MCL 397.182(1))[2]. Similarly, AAPS now argues that the Revised School Code, MCL 380.11a(3)(b)[3] expressly authorizes the school district to implement a weapons policy to provide for the safety and welfare of pupils. The CADL court found the library's weapons policy was permitted under the DLEA in so far as it was not in direct conflict with state statutes. It is not likely that AAPS's weapons policy would be similarly permitted under The Revised School Code without an exception mirroring MCL 28.425o(1)(a). However, with such a carve-out for concealed carry at school in compliance with the statute, a modified AAPS weapons policy might be permissible under The Revised School Code.

Second, CADL argued district libraries were not expressly preempted by the Firearm and Ammunition Act because "in MCL 123.1101(a), the Legislature defined the phrase 'local unit of government' to mean 'a city, village, township, or county.'" Id. at 231. AAPS similarly argues that the statute does not expressly include "school district" in the above definition. See *Appellants' Brief on Appeal* at 1. The CADL court found that libraries were not expressly barred from imposing firearm regulations because a library is not a city, village, township or county. *Capital Area Dist. Library* at 231. It is also likely that AAPS would not be expressly barred from imposing their firearm regulation <u>if it did not directly conflict</u> with state statutes.

The CADL court did address the nature of both district libraries and school districts, finding that …

> "although district libraries have the authority to adopt bylaws and regulations and do any other thing necessary for conducting the district-library service, as stated earlier, this Court has held that a district library is a quasi-municipal corporation, i.e., a governmental agency authorized by constitution or statute to

[2] The District Libraries Establishment Act (1989) precedes the Firearms and Ammunition Act (1990) by one year.
[3] The Revised School Code (1976) predated the Firearms and Ammunition Act (1990) by fourteen years.

operate for and about the business of the state. Jackson Dist. Library v. Jackson Co. # 1, 146 Mich.App. 392, 396, 380 N.W.2d 112 (1985), citing Attorney General ex rel. Kies v. Lowrey, 131 Mich. 639, 643, 92 N.W. 289 (1902). " [T]he term 'municipal corporation' may be used in the broad sense to include ... quasi-municipal corporations." Huron-Clinton Metro. Auth. v. Attorney General, 146 Mich.App. 79, 82, 379 N.W.2d 474 (1985). Quasi-municipal corporations " possess and can exercise only such powers as are granted in express words or those necessarily and fairly implied in or incident to powers expressly conferred by the Legislature." Id. As previously discussed, the DLEA gives CADL's board the authority to adopt regulations that govern the library, to supervise and control library property, and to do any other thing necessary to conduct the CADL district-library service. MCL 397.182(1). Nevertheless, a quasi-municipal corporation such as a district library remains subject to the Constitution and the laws of this state. **See Detroit Sch. Dist. Bd. of Ed. v. Mich. Bell Tel. Co., 51 Mich.App. 488, 494-495, 215 N.W.2d 704 (1974) (explaining that a school district, a quasi-municipal corporation, is a state agency that is subject to the Constitution and laws of the state); Lowrey, 131 Mich. at 644, 92 N.W. 289 ("The school district is a State agency. Moreover, it is of legislative creation. It is true that it was provided for in obedience to a constitutional requirement; and whatever we may think of the right of the district to administer in a local way the affairs of the district, under the Constitution, we cannot doubt that such management must be in conformity to the provisions of such laws of a general character as [826 N.W.2d 743] may from time to time be passed....")**; see also generally People v. Llewellyn, 401 Mich. 314, at 321, 257 N.W.2d 902 (" Under Const. 1963, art. 7, § 22, a Michigan municipality's power to adopt resolutions and ordinances relating to municipal concerns is ' subject to the Constitution and law' ."). Indeed, state law may preempt a regulation by any inferior level of government that attempts to regulate the same subject matter as a higher level of government. See McNeil v. Charlevoix Co., 275 Mich.App. 686, 697 & n. 11, 741 N.W.2d 27 (2007). " Thus, although we deal here with a regulation promulgated by a local administrative agency, application of the principles developed in determining the validity of local ordinances in light of statutory enactments on the same or similar subject matter is appropriate." Id. at 697 n. 11, 741 N.W.2d 27.

Id. at 231. Emphasis added.

After determining that CADL was not expressly barred under the State's preemption statute, and that CADL was authorized under the DLEA to implement its weapons policy, the court's analysis continued.

> A state statutory scheme preempts regulation by a lower-level governmental entity when either of two conditions exist: (1) the local regulation directly conflicts with the state statutory scheme or (2) the state statutory scheme occupies the field of regulation that the lower-level government entity seeks to enter, " even where there is no direct conflict between the two schemes of regulation." Llewellyn, 401 Mich. at 322, 257 N.W.2d 902; see also Ter Beek, 297 Mich.App. at 453, 823 N.W.2d 864; Mich. Coalition, 256 Mich.App. at 408, 662 N.W.2d 864. CADL's weapons ban does not directly conflict with Michigan's statutory scheme pertaining to gun regulation because no Michigan statute expressly prohibits district libraries from regulating weapons. To determine whether field preemption applies, i.e. whether the state has occupied the field of regulation that CADL seeks to enter in this case, we must evaluate the law using the guidelines set forth by our Michigan Supreme Court in Llewellyn. Id. at 233

The four tests in *Llewellyn* are as follows:

> First, where the state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive, there is no doubt that municipal regulation is pre-empted.
>
> Second, pre-emption of a field of regulation may be implied upon an examination of legislative history.
>
> Third, the pervasiveness of the state regulatory scheme may support a finding of pre-emption.
>
> Fourth, the nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest.

> *Michigan Coalition for Responsible Gun Owners v. City of Ferndale*; 256 Mich.App. 401, 414 (2003); cert. den. 469 Mich. 880 (2003) citing *People v Llewellyn*, 401 Mich 314, 322 (1977).

After applying the first two *Llewellyn* guidelines, the CADL court turned to an analysis which directly touches upon the issues in the instant motion:

> The third guideline set forth in Llewellyn requires us to examine the pervasiveness of the state regulatory scheme. In addition to the Legislature's enactment of MCL 123.1102, the Legislature's statutory scheme regarding firearm regulation addresses who may possess a firearm and how, when, and where a firearm may be possessed. Subject to exceptions for certain individuals, MCL 750.234d(1) prohibits a person from possessing a firearm on the premises of any of the following: depository financial institutions, churches or other places of religious worship, courts, theatres, sports arenas, daycare centers, hospitals, and establishments licensed under the former Michigan Liquor Control Act.
>
> With the exception of certain individuals, MCL 750.237a(4) prohibits the possession of a weapon in a weapon-free school zone, which is defined as "school property and a vehicle used by a school to transport students to or from school property." MCL 750.237a(6)(d).
>
> Subject to certain exceptions, MCL 28.425o(1) prohibits a person who is licensed to carry a concealed pistol from carrying a concealed pistol on the premises of any of the following: a school or school property; a public or private child-care center, daycare center, child-caring institution, or child-placing agency; a sports arena or stadium; a bar or tavern licensed under the Michigan Liquor Control Code, MCL 436.1101 et seq.; any property or facility owned by a church or [826 N.W.2d 746] other place of worship; certain entertainment facilities falling within MCL 28.425o(1)(f); a hospital; and a dormitory or classroom of a college or university.
>
> **…**
>
> As can be gleaned from these numerous statutes included in the Legislature's statutory scheme regulating firearms, the statutory scheme includes " a broad, detailed, and multifaceted attack" on the possession of firearms. Llewellyn, 401 Mich. at 326, 257 N.W.2d 902. The extent and specificity of this statutory scheme, coupled with the Legislature's " clear policy choice [in MCL 123.1102] to remove from local units of government the authority to dictate where firearms may be taken," Mich. Coalition, 256 Mich.App. at 414, 662 N.W.2d 864, demonstrates that the

> Legislature has occupied the field of firearm regulation that the library's weapons policy attempts to regulate: the possession of firearms.
>
> This conclusion is supported by consideration of the fourth Llewellyn guideline: whether the nature of the regulated subject matter demands exclusive state regulation " to achieve the uniformity necessary to serve the state's purpose or interest." Llewellyn, 401 Mich. at 324, 257 N.W.2d 902. The regulation of firearm possession undoubtedly calls for such exclusive state regulation. If the state prevents all public libraries established by a city, village, township, or county from passing their own firearms regulations but does not similarly prevent district libraries from doing so, it would result in a **"Balkanized patchwork of inconsistent local regulations."** See City of Brighton v. Hamburg Twp., 260 Mich.App. 345, 355, 677 N.W.2d 349 (2004). In such a case, citizens of this state would be subject to varying and possibly conflicting regulations regarding firearms and " a great deal of uncertainty and confusion would be created." Llewellyn, 401 Mich. at 327, 257 N.W.2d 902. It would be extremely difficult for firearm owners to know where and under what circumstances they could possess a gun and just as difficult for other members of the public to know what libraries to avoid should they wish not to be around guns. [826 N.W.2d 747] An exclusive, uniform state regulatory scheme for firearm possession is far more efficient for purposes of obedience and enforcement than a patchwork of local regulation.
>
> Accordingly, we hold that state law preempts CADL's weapons policy because the Legislature, through its statutory scheme in the field of firearm regulation, has completely occupied the field that CADL's weapons policy attempts to regulate. [4] The trial court, therefore, erroneously granted summary disposition in favor of CADL on the basis that the weapons policy was valid as a matter of law. Furthermore, we hold that the trial court abused its discretion by granting CADL's request for permanent injunctive relief, i.e., by permanently enjoining MOC, its members, their agents, and members of the public from entering CADL's buildings and branches while openly carrying a weapon in violation of CADL's weapons policy. Id. at 237.

AAPS's weapons policy is similarly field preempted. For how could the State occupy the field of firearm regulation when the *CADL* decision was reached, but not now? The decision in

the instant case not only disregards the *CADL* decision but in fact eviscerates this Court's long-standing precedent in *Llewellyn.*

Any firearms regulation by AAPS is expressly and impliedly preempted by Michigan firearms regulations. It is a long-held rule of law that where the legislature has enacted laws allowing and regulating certain conduct, it is presumed that the legislature intended to *allow* that conduct and local ordinances and rules cannot completely disallow the same conduct. In National Amusement Co. v Johnson, 270 Mich. 613, 259 N.W. 342 (1935), a local public health and safety ordinance *prohibiting* endurance competitions was held invalid in the face of a state law *allowing* such competitions *if state requirements are met*. The court stated, "[w]hat the Legislature permits, the city cannot suppress, without express authority therefore. . . [T]he ordinance attempts to prohibit what the statute permits. Both statute and ordinance cannot stand. Therefore, the ordinance is void."). National Amusement Co. v Johnson, 270 Mich. 613, 617, 259 N.W. 342, 343 (1935). In Michigan Restaurant Association v City Of Marquette, 245 Mich.App. 63, 626 N.W.2d 418 (2001), a local public health ordinance completely *banning* smoking in restaurants was held to be directly in conflict with state statute *allowing* smoking in restaurants that provide for a certain percentage of nonsmoking tables, and was, therefore, preempted. "The ordinance creates a general prohibition on smoking as opposed to, for example, creating a higher percentage of nonsmoking tables. . . [The statute] directly addresses smoking and nonsmoking seats in restaurants by requiring a certain number of seats to be nonsmoking seating. The Marquette ordinance . . . involves an area already specifically covered by state statute and it directly opposes what the state statute specifically allows." Michigan Restaurant Association v City Of Marquette, 245 Mich.App. 63, 69, 626 N.W.2d 418, 422 (2001).

The legislative history of MCL §123.1102, the pervasiveness of state firearms regulation, and the need for uniformity in firearms regulation in Michigan militate towards a determination that AAPS has no authority to regulate firearms in its facilities. In adopting §123.1102, the Legislature recognized the need to preempt firearms regulation by local units of government because, as stated in the first sentence of the first paragraph to the Second Analysis for 1991 House Bill 5437, Legislative Analysis Section, Lansing, MI (the "1991 Legislative Analysis"), "[c]urrent [i.e., before 1991] local units of government have the authority to enact and enforce gun control ordinances." The 1991 Legislative Analysis then provides a description of efforts by several municipalities to enact gun control ordinances.

Michigan firearms laws are intended to occupy the field of firearms regulation insofar as an entity of limited power, such as AAPS, is concerned, and therefore, impliedly preempts firearms regulation by the school district. As the 1991 Legislative Analysis asserts in its statement of the apparent problem:

> The narrow defeat of [local firearms] ordinances has resulted in concern that continued local authority to enact and enforce gun control ordinances may result in the establishment of a patchwork of ordinances. Many fear that the enactment of several gun control ordinances will make it hard for officers to enforce the laws and that gun enthusiasts will be unfairly prosecuted for not knowing the laws and the areas to which they apply.
>
> Second Analysis, 1991 House Bill 5437 at 1.

The concern about establishment of a patchwork of local ordinances regulating activities also regulated at the state level has also been addressed by the courts. In City Of Brighton v Township Of Hamburg, 260 Mich.App. 345, 677 N.W.2d 349 (2004), under a state regulatory regime, a wastewater discharge permit was issued by the Department of Environmental Quality

subject to specific pollutant restrictions less strict than restrictions imposed under a local ordinance. The local ordinance was preempted. The Court of Appeals noted, "[O]ur Legislature enacted a broad, detailed, and multifaceted legislative scheme to manage point source pollution control. Clearly, if each municipality, township, and county were able to establish its own effluent discharge limitations, as urged by defendant, a great deal of uncertainty and confusion would be created." *City Of Brighton*, Mich.App. 345, 359, 677 N.W.2d 349, 356 (citations and quotation marks omitted).

> The regulation of the discharge of waste into the waters of the state clearly demands *exclusive state regulation requiring statewide uniformity* in standards necessary to serve the state's purposes and interests. To allow local units of government such as townships, counties or cities to enact discharge limits concerning discharges into waters located within or passing through these jurisdictions, would result in *statewide confusion* concerning conflicting discharge limits. Such a regulatory scheme would create a crazy quilt patchwork scheme of regulation under which certain dischargers could be found to violate certain discharge limits enacted by certain local units of government and not violating other local units of government's discharge limits.
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> *City of Brighton v Township of Hamburg*, 260 Mich.App. 345, 346, 677 N.W.2d 349, 351 (2004) (emphases added).

The legislature's concern about a patchwork or local ordinances creating unfair prosecutions of persons carrying licensed pistols parallels the Court of Appeals' concern in *City of Brighton*, *supra*. Such individuals would inevitably enter properties controlled by authorities where local rules ban conduct *licensed and regulated* under state law, creating a spate of unfair prosecutions in some places for conduct fully lawful elsewhere in Michigan. Such a patchwork of local regulation would create an unfair burden on the courts, prosecutors, police, and on members of the public engaging in conduct that is allowed, licensed, and regulated under

Michigan's firearms laws and protected under the Michigan and United States Constitutions. Therefore, any local restriction by AAPS is preempted by Michigan's firearms laws and is void.

THE LOWER COURTS FAILED TO APPLY PROPERLY THE SUPREME COURT'S PRECEDENT IN *PEOPLE v. LLEWELLYN*

The lower courts erred by ignoring the doctrine of field preemption in their written opinions. A state statutory scheme preempts regulation by a lower-level governmental entity when either of two conditions exist: (1) the local regulation directly conflicts with the state statutory scheme or (2) the state statutory scheme occupies the field of regulation that the lower-level government entity seeks to enter, "even where there is no direct conflict between the two schemes of regulation."[2] *Llewellyn*, 401 Mich at 322. Appellants acknowledge that the AAPS policy does not directly contradict with the state statutory scheme as provisions exist to allow exceptions for people exempt from pistol-free zones as defined in MCL 28.425o.[4] However, it has been long established that "the Legislature made a clear policy choice to remove from local units of government the authority to dictate where firearms may be taken." *Michigan Coalition*, Id. at 415. The Court of Appeals opinion ignores that the Legislature occupies the field of firearms regulation.

The Capital Area District Library Authority was not expressly preempted under MCL 123.1101(b) since it was not one of the "local units of government" expressly listed. The *CADL* court correctly observed *non plus quam omnes partes* as the Authority was a creation of two preempted entities, *viz.* the City of Lansing and the County of Ingham and thus could not

have greater authority than that granted to either. Nevertheless, the *CADL* court reached its decision not because of the creators of the Authority being expressly preempted but rather because an Authority is an *inferior* level of government:

> State law preempts regulation by an inferior level of government in two situations: (1) where the local regulation directly conflicts with a state statute statute, or (2) where the statute completely occupies the field that the local regulation attempts to regulate
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> *McNeil v Charlevoix Co*, 275 Mich App 686, 697; 741 NW2d 27 (2007)

Just as a school district is an inferior level of government:

> The school district is a State agency. Moreover, it is of legislative creation. It is true that it was provided for in obedience to a constitutional requirement; and, whatever we may think of the right of the district to administer in a local way the affairs of the district under the Constitution, we cannot doubt that such management must be in conformity to the provisions of such laws of a general character as may from time to time be passed, and that the property of the district is in no sense private property, but is public property, devoted to the purposes of the State, for the general good
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> *Attorney Gen ex rel Kies v Lowrey*, 131 Mich 639, 644; 92 NW 289 (1902)

The Court of Appeals' opinion in the instant case is directly in conflict with the decision in *CADL*. Whereas the *CADL* court determined under its *Llewellyn* analysis that the four-factor preemption test had been satisfied, the lower courts in the instant case reached an entirely different conclusion by :

a) Dismissing the legislative intent analysis requirement of *Llewellyn* as unimportant.[5]

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[4] It should be noted that in the companion case on appeal, *Michigan Open Carry v. Clio Area School District*¸ an argument can be made that statutory preemption exists as to the Clio Area School District in that MCL 28.425o provides exemptions to pistol free zones not enumerated in the district's weapons policy.

[5] "The second *Llewellyn* factor requires us to consider legislative history. Plaintiffs point to the House Legislative Analysis we cited in *CADL*, reciting that MCL 123.1102 "was designed to

b) Agreeing with the third *Llewellyn* prong in acknowledging that the state regulatory scheme is pervasive yet conflating that into justification why preemption *should not* apply.[6]

c) Insisting that there is no need for uniform state regulation with regard to where firearms may be carried.[7]

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address the 'proliferation of local regulation regarding firearm ownership, sale, and possession' and the 'concern that continued local authority to enact and enforce gun control ordinances may result in the establishment of a patchwork of ordinances.' " *CADL*, 298 Mich App at 236. We find this fragment of legislative history useless, as it speaks to ordinances and local units of government rather than to schools. As no other legislative history has been presented to us, we conclude that this factor does not support preemption."

Mich Gun Owners, Inc v Ann Arbor Pub Sch, ___NW2d___; 2016 Mich. App. LEXIS 2312, at *13 (Ct App, Dec. 15, 2016)

[6] "Given this panoply of firearm laws, we most certainly agree that firearms are pervasively regulated in Michigan. But this fact, standing alone, does not compel us to imply preemption. "While the pervasiveness of the state regulatory scheme is not generally sufficient by itself to infer preemption, it is a factor which should be considered as evidence of preemption." ***Llewellyn*, 401 Mich at 324**. Here, relevant segments of a multifaceted statutory framework evince the Legislature's intent to *prohibit* weapons in schools, rather than to rein in a district's ability to control the possession of weapons on its campuses."

Mich Gun Owners, Inc v Ann Arbor Pub Sch, ___NW2d___; 2016 Mich. App. LEXIS 2312, at *15-16 (Ct App, Dec. 15, 2016)

[7] *Llewellyn*'s fourth factor asks whether "the nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest." Given that the Legislature has never expressly reserved to itself the ability to regulate firearms in schools, our evaluation of this factor requires us to weigh policy choices.

Plaintiffs insist that a "patchwork" of differing school policies will create "confusion" and will "burden" the police and the public. We find no merit in this argument. The Legislature has broadly empowered school districts to "[p]rovid[e] for the safety and welfare of pupils while at school or a school sponsored activity or while en route to or from school or a school sponsored activity." Indisputably, the Legislature recognized that different school districts would employ different methods and strategies to accomplish this goal. Most parents of school-age children send those children to schools located within a single school district. Most parents easily learn and adapt to the policies and procedures applicable to their children's schools and district. We discern no possibility of meaningful "confusion" or burdening of law enforcement. To the contrary, the AAPS policy ensures that the learning environment remains uninterrupted by the invocation of emergency procedures which would surely be required each and every time a weapon is openly carried by a citizen into a school building

CONCLUSION

Appellants admit that Appellees have a grave responsibility to care for the safety of the children educated in the district. Appellants further admit that Appellees have authority to promulgate rules and policies to safeguard children in their care. Such authority, however, in no way allows Appellees to violate state law, which Policies 5400, 5410 and 5420 clearly do. The legislature has decided that it alone holds the power to regulate firearms and Michigan statutory law occupies the entire field of regulation relating to the possession and carrying of firearms. State regulation of firearms is pervasive. The possession and carrying of firearms is already regulated in numerous ways under State law with respect to both place and manner of carry. Some examples are the following:

- Possession of firearm on certain premises prohibited. MCL §750.234d;
- Premises on which carrying concealed weapon prohibited. MCL §28.425o;
- Carrying a firearm or dangerous weapon with unlawful intent. MCL §750.226;
- Possession of firearm by a person convicted of felony. MCL §750.224f;
- Carrying a pistol without having first obtained a license to purchase (which entails a background check by local law enforcement) is prohibited. MCL §28.422. A violation is a misdemeanor under MCL §750.232a(1).
- Carrying a concealed pistol without a concealed pistol license is a felony. MCL §750.227(2).
- Possessing a weapon in a weapon free school zone (without a concealed pistol license) is a misdemeanor. MCL §750.237a(4).

Mich Gun Owners, Inc v Ann Arbor Pub Sch, ___NW2d___; 2016 Mich. App. LEXIS 2312, at *17-18 (Ct App, Dec. 15, 2016)

. Brandishing of firearms is prohibited. MCL §750.234e.

Allowing a school district to regulate firearms would enable local governments to "create a crazy quilt patchwork scheme of [firearms] regulation," City of Brighton v Township Of Hamburg, 260 Mich.App. 345, 346, 677 N.W.2d 349, 351 (2004), creating the precise situation the legislature sought to avoid. Any attempt by AAPS at firearm regulation is preempted as a result of Michigan's complete occupation of the field of firearms regulation.

STATEMENT REGARDING ORAL ARGUMENT

Appellants submit that the factual and legal issues in this appeal are sufficiently complex, such that this case should not be selected for decision without oral argument, because the Court will be aided in its decision if it hears oral arguments from counsel.

REQUEST FOR RELIEF

WHEREFORE, for the reasons stated in this Application for Leave to Appeal, Plaintiff-Appellants Ulysses Wong and Michigan Gun Owners, Inc. respectfully request this Honorable Court reverse the decision of the Court of Appeals and the trial court granting summary judgment to Defendant-Appellees. Plaintiff-Appellants submit the law is well-established with respect to direct and field preemption in this State and Defendants-Appellees position is not legally justifiable. Therefore, Plaintiffs-Appellants respectfully request that Defendant-Appellees be assessed and ordered to pay the legal costs and expenses of Plaintiff-Appellants.

Dated January 25, 2017 /s/ James J. Makowski P62115